TŁĮCHǪ FINANCING AGREEMENT

BETWEEN

THE DOGRIB TREATY 11 COUNCIL

AND

THE GOVERNMENT OF CANADA

(as represented by
the Minister of Indian Affairs and
Northern Development)

("Canada")

WHEREAS the Tłı̨chǫ, the Government of the Northwest Territories and Canada have entered into the Tłı̨chǫ Agreement which provides that the Dogrib Treaty 11 Council and Canada will sign a financing agreement, to be for a term of at least five years from the effective date of the Tłı̨chǫ Agreement, which sets out the amounts of money to be provided by Canada to the Tłı̨chǫ Government towards the cost of establishing and operating the Tłı̨chǫ Government and its institutions including any role identified for it or them under an intergovernmental services agreement;

NOW THEREFORE the Parties agree as follows:

DEFINITIONS

1. Words and expressions not defined in this agreement but defined in the Tłı̨chǫ Agreement have the meanings ascribed to them in the Tłı̨chǫ Agreement.

2. The following definitions apply in this agreement.

"annual price adjustment factor" means, for a fiscal year (FY), the FDDIPI for the fiscal year preceding that year (FY-1) divided by the FDDIPI for the fiscal year two years before that fiscal year (FY-2), according to the Statistics Canada publication first published for the July, August, September period of the later of those two years.

"base funding amount" means,

(a) for the first fiscal year, $2,810,114 multiplied by the quotient obtained by dividing the FDDIPI for the fiscal year preceding the first fiscal year by the FDDIPI for the fiscal year commencing April 1, 2002 according to the Statistics Canada publication first published for the July, August, September period of the fiscal year preceding the first fiscal year; and

(b) for any other fiscal year the annual price adjustment factor for that year multiplied by the base funding amount for the preceding year.

"business purposes" means business activities central to the objective or purpose of the entity and includes the investment of funds in securities and other assets for the purpose of gaining or producing income.

"capital gains" means income from the sale of property for more than its cost.

"FDDIPI" means, for a fiscal year, the *Canada Final Domestic Demand Implicit Price Index* for the July, August, September period of that year published by Statistics Canada.

"fifth fiscal year" means the fiscal year that includes the 4th anniversary of the effective date.

"first fiscal year" means the fiscal year that includes the effective date.

"fiscal year" means the period from April 1st of one year to March 31st of the following year.

"future financing agreement" means an agreement referred to in 7.11 of the Thchǫ Agreement that is concluded for any fiscal year after the fifth fiscal year.

"generally accepted accounting principles" means the accounting principles generally accepted in Canada from time to time for the public sector and, if the handbook published by the Canadian Institute of Chartered Accountants or its successor includes a relevant statement of a principle or an accounting guideline, that statement will be considered conclusively to be an accounting principle or guideline generally accepted in Canada.

"net own source revenue capacity" means, for a fiscal year, the amount, if any, by which the Thchǫ own source revenue capacity for that fiscal year exceeds $750,000.

"Parties" means the parties to this agreement and "Party" means any one of them.

"seventh fiscal year" means the fiscal year that includes the 6th anniversary of the effective date.

"sixth fiscal year" means the fiscal year that includes the 5th anniversary of the effective date.

"Thchǫ Agreement" means the land claims and self-government agreement entered into among the Thchǫ, the Government of the Northwest Territories and Canada signed on _____200__, as amended from time to time.

"Thchǫ capital trust" means a trust that has been designated by the Minister of National Revenue pursuant to the Thchǫ tax treatment agreement as a Thchǫ capital trust.

"Thchǫ Finance Committee" means the committee consisting of the representatives appointed under section 34 of this agreement.

"Thchǫ Government Corporation" means a corporation where all the shares (except the directors' qualifying shares) or capital of which belong to the Thchǫ Government or a Thchǫ capital trust.

"Thchǫ minerals" means minerals on Thchǫ lands, other than specified substances.

"Thchǫ own source revenue capacity" means for a fiscal year (FY), the sum of the capacities described in Schedule A for the fiscal year two years before that fiscal year (FY-2), as calculated in accordance with that Schedule.

"twentieth fiscal year" means the fiscal year that includes the 19th anniversary of the effective date.

INTERPRETATION

3. In this agreement:

   (a) unless it is otherwise clear from the context, "including" means "including, but not limited to", and "includes" means "includes, but is not limited to";

   (b) headings and subheadings are for convenience only, do not form a part of this agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this agreement;

   (c) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;

   (d) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular;

   (e) all accounting terms have the meanings assigned to them under generally accepted accounting principles;

   (f) this agreement shall be interpreted according to the *Interpretation Act* (Canada) with such modifications as the circumstances require; and

   (g) where there is any inconsistency or conflict between the provisions of this agreement and the Tłı̨chǫ Agreement, the provisions of the latter shall prevail to the extent of the inconsistency or conflict.

4. This agreement does not form part of the Tłı̨chǫ Agreement.

5. This agreement is not intended to be a treaty or a land claim agreement, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

COMMENCEMENT OF THIS AGREEMENT

6. This agreement will commence on the effective date.

ELIGIBILITY FOR PROGRAMS AND SERVICES

7. The Tłı̨chǫ Government and Tłı̨chǫ Citizens will not be eligible for the programs and services identified in Schedule B to this agreement during any fiscal year that payments are made to the Tłı̨chǫ Government under section 9, 10 or 11 of this agreement.

8. Where the Tłı̨chǫ Government notifies Canada that it wishes to amend Schedule B to list an additional program or service in exchange for additional payments to the Tłı̨chǫ Government, Canada shall, within 6 months of such notification, enter into negotiations as to how much additional money it will pay in exchange for listing any such program or service. The Parties shall attempt to reach agreement as soon as reasonably practicable.

PAYMENTS

9. Canada shall pay to the Tłı̨chǫ Government

(a) on the effective date, $673,500 multiplied by the quotient obtained by dividing the FDDIPI for the fiscal year preceding the effective year by the FDDIPI for the fiscal year commencing April 1, 2001 according to the Statistics Canada publication first published for the July, August, September period of the fiscal year preceding the first fiscal year;

(b) for the first fiscal year, the base funding amount multiplied by the quotient obtained by dividing
(i) the number of days from, and including, the effective date to, and including, March 31 that first follows the effective date, by
(ii) 365, if that period does not include a 29th day in February, or 366 if it does;

(c) for each of the three fiscal years following the first fiscal year, the base funding amount for that year;

(d) for the fifth fiscal year, the greater of
(i) $1,000,000, and
(ii) the amount by which the base funding amount for that year exceeds the product of the net own source revenue capacity for that fiscal year and the inclusion factor specified for that year in Schedule C; and

(e) for each of the sixth and seventh fiscal years, the greater of
(i) $1,000,000, and
(ii) the amount by which the base funding amount for that year (unless the Parties agree in a future financing agreement to a different amount) exceeds the product of the net own source revenue capacity for that fiscal year and the inclusion factor specified for that year in Schedule C.

10. Where a future financing agreement is concluded for any of the 12 fiscal years following the seventh fiscal year, Canada shall pay to the Tłı̨chǫ Government for each such year the greater of

(a) $1,000,000, and

(b) the amount by which the amount provided in that future financing agreement for the purpose of this provision exceeds the product of the net own source revenue capacity for that fiscal year and the inclusion factor specified for that year in Schedule C.

11. Where a future financing agreement is concluded for the twentieth fiscal year or for any of the following fiscal years, Canada shall pay to the Tłı̨chǫ Government for each such year the greater of

    (a) $1,000,000, and

    (b) the amount by which the amount provided in that future financing agreement for the purpose of this provision exceeds one half of the net own source revenue capacity for that fiscal year.

12. Subject to adjustments made pursuant to sections 21 to 24 of this agreement, the payments under paragraph 9(b), (c), (d) or (e) or section 10 or 11 of this agreement for a fiscal year shall be made as follows:

    (a) except for the first fiscal year where the effective date is a day other than April 1,
        (i) one-sixth of the total amount due for the year shall be paid on April 1 of that year, and
        (ii) one-eleventh of the balance due shall be paid on the 1st day of each of the remaining months in that year; and

    (b) where the effective date is a day other than April 1, the payments under paragraph 9(b) of this agreement shall be made in the same number of equal installments as there are full months in the effective year, on the first day of each such month commencing on the first day of the first full month after the effective date.

ANNUAL FISCAL PLANS

13. Canada shall prepare and provide to the Tłı̨chǫ Government, at least 90 days prior to the commencement of a fiscal year, a preliminary fiscal plan, in the form set by the Tłı̨chǫ Finance Committee, advising the Tłı̨chǫ Government of the amount to be paid for that fiscal year to the Tłı̨chǫ Government under this agreement and of the installment schedule, setting out the data and calculations used to compute the amount.

14. The Tłı̨chǫ Government shall, no later than 60 days prior to the commencement of a fiscal year, advise Canada in writing of any errors by Canada in its preliminary fiscal plan for that year.

15. Except where there is a dispute as to the preliminary plan, Canada shall prepare and provide to the Tłı̨chǫ Government, on or before the commencement of a fiscal year, a final fiscal plan, in the form set by the Tłı̨chǫ Finance Committee, explaining the impact of any changes on the amount to be paid to it for that fiscal year.

16. The Tłı̨chǫ Government shall, no later than 30 days after receiving the final fiscal plan, advise Canada in writing of any errors in the data or calculations used by Canada in any adjustment.

17. If the Tłı̨chǫ Government advises Canada of an error in the preliminary or final fiscal plan, the Tłı̨chǫ Finance Committee shall meet, as soon as practicable and no later than 15 days after such notification, to discuss the issue and to determine what corrections, if any, should be made to the calculations.

18. If a dispute as to the amount to be paid to the Tłı̨chǫ Government for a fiscal year is not resolved under section 17, 40 or 41 of this agreement prior to the beginning of that year, Canada shall pay installments to the Tłı̨chǫ Government in accordance with its calculations as set out in the fiscal plan under dispute.

19. If, at any time after a fiscal year commences, either Party discovers an error in the dollar values, adjustors, other parameters, formulae, or computation methods used in computing the amount to be paid for that year, the Parties, through the Tłı̨chǫ Finance Committee, shall make every reasonable effort to reach agreement respecting correction of the error.

ADJUSTMENTS TO ANNUAL PAYMENTS

20. In the event that there is a delay in publishing the FDDIPI to be used for a fiscal year, then the annual price adjustment factor from the previous year, or an estimate as otherwise agreed by the Tłı̨chǫ Finance Committee, may be used until the statistics are available, and any subsequent adjustments will be made prior to the disbursement of the next scheduled payment to the Tłı̨chǫ Government.

21. If an adjustment relates to the amount to be paid under section 9, 10 or 11 of this agreement for a fiscal year prior to the fiscal year in which the error is discovered or in which the adjustment is agreed to, the adjustment shall, unless the Parties otherwise agree, be treated as though it were an adjustment to the amount to be paid for the fiscal year in which the error was discovered or the adjustment was agreed to.

22. Unless the Tłı̨chǫ Finance Committee agree otherwise, any adjustment confirmed in a fiscal year shall be divided equally among the remaining installments for that fiscal year, provided that if the adjustment results in an obligation by the Tłı̨chǫ Government to repay to Canada an amount greater than $1,000.00, the Tłı̨chǫ Government may elect, through its representative on the Tłı̨chǫ Finance Committee, that the adjustment be subtracted from the first installment of the next fiscal year by giving written notice to Canada's representative on that Committee.

23. Provided the election is given under section 22 of this agreement at least 15 days prior to payment of the next installment, Canada shall pay that installment in compliance with the election, otherwise any corrections required to that installment to comply with the election shall be made with the next following installment.

DISCRETION TO ALLOCATE FINANCIAL RESOURCES

24. For greater certainty, the Tłı̨chǫ Government has the discretion to allocate and expend the funding transferred to it under this agreement as the Tłı̨chǫ Government in its discretion determines.

PROGRAM AND FINANCIAL ACCOUNTABILITY

25. All accounts and financial statements required to be prepared under this agreement will be prepared in accordance with generally accepted accounting principles.

26. The Tłı̨chǫ Government will

    (a) within 120 days following the end of each fiscal year provide Canada with
        (i) audited financial statements for the fiscal year for the Tłı̨chǫ Government, and
        (ii) a separate report of the Tlicho own source revenue capacity for that fiscal year prepared in accordance with section 27 of this agreement; and

    (b) where the Tłı̨chǫ Government delegates to another person authority to deliver programs and services on an ongoing basis, the Tłı̨chǫ Government will ensure that adequate procedures are in place to establish program and financial accountability for those funds, including financial audit, where appropriate.

27. The report for a fiscal year to be provided by the Tłı̨chǫ Government to Canada pursuant to subparagraph 26(a)(ii) of this agreement shall show separately each of the capacities and the amounts to be included, for the fiscal year two years before that fiscal year, as described in and calculated in accordance with Schedule A.

UNFORSEEN EVENTS

28. The Tłı̨chǫ Government may, by sending a written submission to Canada's representative on the Tłı̨chǫ Finance Committee, request funding, in addition to the payments under sections 9 to 11 of this agreement, to pay significant, unforseen costs that it is unable to absorb financially, and for which no other source of funding is available, arising in the following circumstances:

    (a) natural disasters on Tłı̨chǫ lands;

    (b) new initiatives created by Canada that place new responsibilities on the Tłı̨chǫ Government; or

    (c) unforseen events, which are beyond the power of the Tłı̨chǫ Government to control, that create new and unexpected responsibilities for the Tłı̨chǫ Government.

29. Upon receipt of a submission under section 28 of this agreement, Canada's representative on the Tłı̨chǫ Finance Committee shall consider the request and notify the Tłı̨chǫ Government in writing of its decision with reasons.

PARLIAMENTARY APPROPRIATIONS

30. Monies to be provided by Canada under this agreement shall be paid out of such monies as may be appropriated by Parliament for those purposes.

INFORMATION EXCHANGE

31. The Parties will share, in a timely manner, information reasonably required for purposes of implementation, monitoring, and renewal of this agreement.

32. The Thchǫ Government will collect, maintain and provide to Canada information on governance, on a basis reasonably comparable to that of other similar governments in Canada or, in the absence of similar governments, on a basis agreed to by the Parties.

33. Subject to any applicable legislation or Thchǫ laws, the Parties will collect, share and disclose information under this agreement in a manner that ensures the confidentiality of that information.

TŁĮCHǪ FINANCE COMMITTEE

34. Each of the Parties shall appoint a person to represent it on a committee to be known as the Thchǫ Finance Committee.

35. The Thchǫ Finance Committee will

    (a) meet at least once a year to review this agreement;

    (b) during the first two years of this agreement, establish terms of reference for the comprehensive review of this agreement to be carried out under paragraph (d), and recommend their approval to the Parties;

    (c) do such things as are appropriate to facilitate the resolution of any problems that arise in respect of this agreement;

    (d) during the fourth year of this agreement, carry out a comprehensive review of this agreement; and

    (e) do such other things relating to this agreement as the Parties may agree from time to time to be appropriate.

36. A Thchǫ Finance Committee member may bring such resource persons to meetings as it considers appropriate to assist in fulfilling its responsibilities under this agreement.

37. The Thchǫ Finance Committee members may, if they agree, invite a representative of the Government of the Northwest Territories to attend meetings of the Committee.

FUTURE FINANCING AGREEMENT

38. On April 1 of the fifth fiscal year, or at an earlier date if the Parties agree, the Parties will begin negotiating a future financing agreement based on the following principles:

    (a) the funding of the Tłı̨chǫ Government is a shared responsibility of government and the Tłı̨chǫ Government, and it is the objective of government and the Tłı̨chǫ Government that, where feasible, the reliance on funding from government will be reduced over time;

    (b) if the Tłı̨chǫ Government has access to a tax base, the revenue capacity associated with that tax base may be considered in determining the level of financing to be received pursuant to the financing agreement;

    (c) the Tłı̨chǫ own source revenue capacity will not be taken into account so as to unreasonably reduce the incentives for the Tłı̨chǫ Government to raise revenues;

    (d) except where a source of revenue is specifically excluded, the Tłı̨chǫ Government's revenues from all sources will be taken into account; and

    (e) the manner in which the Tłı̨chǫ own source revenue capacity is taken into account should not affect the ability of the Parties to deliver programs and services at an adequate level to Tłı̨chǫ Citizens.

AMENDMENT

39. Any amendment to this agreement must be in writing and executed by both Parties.

DISPUTE RESOLUTION

40. Subject to section 17 of this agreement, if the dispute arising from this agreement is not resolved by informal discussion within 60 days of a Party notifying the other Party of the dispute, a party may refer it to the Tłı̨chǫ Finance Committee for resolution.

41. If the members of the Tłı̨chǫ Finance Committee fail to agree on a resolution within 90 days, then a Party may refer the dispute for resolution in accordance with 6.4 of the Tłı̨chǫ Agreement, and upon agreement of the Parties, for resolution in accordance with 6.5 of the Tłı̨chǫ Agreement. For greater certainty, neither the failure of the Parties to conclude a future financing agreement nor failure of a Party to agree to any proposal of another Party during the negotiation of such an agreement is a dispute that can be referred for resolution in accordance with chapter 6 of the Tłı̨chǫ Agreement.

DEFAULT AND REMEDIES

42. Each of the following is a default under this agreement:

    (a) a Party fails to comply with a provision of this agreement;

    (b) a Party gives or makes a representation, statement or report, required under this agreement, that it knows or reasonably ought to know is false; or

    (c) the Thcho Government becomes bankrupt or insolvent or subject to any legislation in respect of bankruptcy, insolvency or winding up.

43. Before taking any action in respect of a default under this agreement, a Party will notify the Party in default, in reasonable detail, of the nature of the default.

44. A Party that receives a notice of default under section 43 of this agreement shall, within 30 days of receipt of the notice,

    (a) remedy the default or, if the default is not capable of being remedied within the 30 day period, commence, and diligently continue, to remedy the default, and notify the other Party of the remedial action taken or to be taken; or

    (b) notify the other Party, with reasons, that it does not agree that it is in default.

45. If, in the reasonable opinion of the Party that gave notice of a default under section 43 of this agreement, the delivery of an agreed-upon program or service under this agreement is materially affected by the default, then on giving at least 14 days notice to the other Party of its intention to do so, the Party that gave the notice of default may

    (a) either directly, or under agreement with another person (including with the other Party), provide or ensure the provision of that program or service; and

    (b) deduct from payments that it has agreed to make under this agreement the amount that it has paid to provide or ensure the provision of that program or service.

46. Nothing in section 45 of this agreement will relieve that Party taking the actions described in paragraph (a) or (b) of that section from any liability that it may incur if it is subsequently determined that it was in error in its opinion that a default had occurred under this agreement.

47. A Party that gives notice of a default under section 43 of this agreement may at any time waive the default, in which case the default is waived for all purposes.

NO IMPLIED WAIVER

48. No term or condition of this agreement, or performance by a Party of a covenant under this agreement, will be deemed to have been waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.

49. No written waiver of a term or condition of this agreement, of performance by a Party of a covenant under this agreement, or of default by a Party of a covenant under this agreement, will be deemed to be a waiver of any other covenant, term or condition, or of any subsequent default.

FURTHER ASSURANCES

50. The Parties will execute any other documents and do any other things that may be necessary to carry out the intent of this agreement.

TIME OF THE ESSENCE

51. Time is of the essence in this agreement.

SEVERABILITY

52. If any part of this agreement is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this agreement had been executed without the invalid portion.

ENUREMENT

53. This agreement will enure to the benefit of and be binding upon the Parties and their respective permitted assigns.

NO ASSIGNMENT

54. Unless otherwise agreed by the Parties, this agreement may not be assigned, either in whole or in part, by either Party.

NOTICES

55. Unless otherwise provided, a notice, document, request, approval, authorization, consent or other communication required or permitted to be given or made under this agreement must be in writing and may be given or made in one or more of the following ways:

    (a) delivered personally or by courier;

    (b) transmitted by facsimile transmission; or

    (c) mailed by prepaid registered post in Canada.

56. A communication will be considered to have been given or made, and received

    (a) if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;

    (b) if sent by facsimile transmission and if the sender receives confirmation of the transmission, at the start of business on the next business day on which it was transmitted; or

    (c) if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.

57. A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below. A Party may change its address or facsimile number by giving a notice of the change to the other Party.

For: **Tłı̨chǫ Government**
Attention: *Grand Chief*
Box 417
Behchokǫ̀, *NT*
X0E 0Y0
Fax Number: (867) 392-6389

For: **Canada**
Attention: *Minister of Indian Affairs and Northern Development*
House of Commons
Confederation Building
Ottawa, ON
K1A 0A6
Fax Number: (819) 953-4941